DATO' CHANG JONG YU & ORS v. KUALA IBAI PROPERTY SDN BHD & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
AZIMAH OMAR JCA
NOORIN BADARUDDIN JCA
[CIVIL APPEAL NO: W-02(IM)(NCC)-1912-11-2024]
11 APRIL 2025

Abstract – *The core elements under s. 351(1) of the Companies Act 2016 ('CA') primarily concern the occurrence or the future impending occurrence of contravention against the CA in which the contravention (or the impending contravention) have affected (or shall affect) the interest of the creditors of a company in liquidation. A s. 351 injunction should necessarily be wide enough to cover the preservation of property to safeguard an interested/affected party's monetary or commercial interest in the manner in which the liquidation of a company is conducted so as to obtain the proceeds for onwards pari passu distribution to the company's creditors.*

CIVIL PROCEDURE: *Injunction – Interlocutory injunction – Application for – Ceasing or halting contraventions of Companies Act 2016 ('CA') – Whether there were was unscrupulous instruments to frustrate legitimate pursuit by judgment creditors of company in liquidation – Malicious design – Whether powers under s. 351 of CA ought to be invoked – Whether reliance on s. 351 of CA sought to override existing winding-up framework to deal with conduct of liquidators – Whether there was multiplicity of proceedings – Whether creditors of company in liquidation could commence separate civil action against third party conspirators alongside ongoing course of winding-up of company – Whether absence of liquidator as party and absence of leave to commence action against liquidator fatal to application under s. 351 – Res judicata – Whether applicable – Whether there was concrete establishment of contraventions of CA – Whether statutory injunction ought to be allowed*

COMPANY LAW: *Winding-up – Winding-up framework – Whether there was malicious design – Whether there was unscrupulous instruments to frustrate legitimate pursuit by judgment creditors of company in liquidation – Application for interlocutory injunction to cease and halt contraventions of Companies Act 2016 ('CA') – Whether powers under s. 351 of CA ought to be invoked – Whether reliance on s. 351 of CA sought to override existing winding-up framework to deal with conduct of liquidators – Whether there was multiplicity of proceedings – Whether creditors of company in liquidation could commence separate civil action against third party conspirators alongside ongoing course of winding-up of company – Whether absence of liquidator as party and absence of leave to commence action*

against liquidator fatal to application under s. 351 – Res judicata – Whether applicable – Whether there was concrete establishment of contraventions of CA – Whether statutory injunction ought to be allowed

The appellants, creditors of Ibaimas Sdn Bhd ('Ibaimas'), appealed against the High Court's dismissal of their application ('encl. 3') for an interlocutory injunction order, namely, *inter alia*; to restrain each of the respondents (defendants) from taking steps to transfer or vest the lands or any interest of the lands or create any interest in the lands belonged or belonging to Ibaimas to themselves or other parties, without prior leave of court or consent in writing by the plaintiffs, pending the disposal of the application on an *inter parte* basis. The appellants' application for the injunctive reliefs were premised primarily under O. 29 r. 1 of the Rules of Court 2012 and s. 351 of the Companies Act 2016 ('CA'). Ibaimas was a wholly-owned subsidiary of the holding group, Kuala Ibai Development Sdn Bhd ('KI Development'). Prior to the winding-up of Ibaimas, Ibaimas's debt owed against the appellants were legally cemented *via* the High Court's decisions in dismissing all of Ibaimas's originating summonses filed against the appellants for a *Fortuna* injunction to restrain the appellants from filing a creditors' petition to wind-up Ibaimas ('*Fortuna* OS'). All of Ibaimas's *Fortuna* OS were heard and dismissed on the primary ground that Ibaimas had admitted all of its debt owed to the appellants ('judgment debt'). Before the appellants could move their creditors' winding-up petition, Ibaimas began the move to dissipate its assets before the creditors could make their move to wind-up Ibaimas. The alleged scheme first hatched in the guise of a joint-venture agreement entered into between Ibaimas and a 'new' co-subsidiary of KI Development, Kuala Ibai Property Sdn Bhd ('first respondent/KIP') ('impugned JVA'). KIP was merely a RM2 corporate vehicle which was incorporated just one week before the inception of the impugned JVA. It was more probable than not that the impugned JVA was engineered as an attempt to dissipate and offload Ibaimas's assets before any of the Ibaimas's creditors could act to put Ibaimas in liquidation by artificially creating a 'new debt' that Ibaimas owed against KI Development's new subsidiary (being KIP) effect of which KIP was able to leverage that 'new debt' as grounds to petition for Ibaimas's liquidation ahead of all other genuine creditors of Ibaimas ('malicious design'). The appellants caught wind of Ibaimas's malicious design and consequently moved an originating summons ('oppression act/OS 44') as an oppression action under s. 346 of the CA on the ground that the impugned JVA was oppressive against the interest of Ibaimas's shareholders, which was allowed. Ibaimas, on its own volition, had executed and recorded a consent order before the court in which Ibaimas were restrained by the power of the court from freely dealing with the assets of Ibaimas until and unless Ibaimas obtained prior approval from the first appellant as a substantial shareholder of Ibaimas ('consent order'). The mechanism of the malicious design was made more apparent considering that Ibaimas's directors brazenly ignored the penal notice within the consent order and proceeded to sell 13 plots of

Ibaimas' lands without the prior consent or approval of the first appellant. In furtherance of the malicious design, KIP was hastily incorporated just one week before the inception of the impugned JVA, and on the basis of Ibaimas's 'debt' under the impugned JVA, KIP petitioned for the winding-up of Ibaimas. In consistent pursuit of curbing the malicious design, the appellants moved Suit 172 to challenge the impugned JVA. Nonetheless, as had been schemed within the malicious design, Ibaimas and its cohorts (inclusive of KIP) sought to frustrate the appellant's litigation to challenge the impugned JVA by abusing the winding-up framework (while utilising the impugned JVA before the existing proceedings in court could even come close to determination) by having KIP petitioning to wind-up Ibaimas as one of Ibaimas's new 'creditor'. The appellants attempted to be involved within the process of KIP's winding-up process by submitting their respective proof of debts ('PODs'). However, despite the consent order and the judgment of debt confirmed by the High Court, the liquidator refused to admit and adjudicate the appellants' PODs. With the KIP's petition to liquidate Ibaimas, and premised on this supposed loss of control, Ibaimas began to hatch the second chapter of the malicious design, post winding-up of Ibaimas. *Via* the surrender of control to the liquidator, Ibaimas and KIP effectively, *inter alia*, artificially created a 'scenario' in which the impugned JVA had to be terminated by the liquidator as Ibaimas could only continue business in compliance with the winding-up framework and say-so of the liquidator. Ibaimas and the first respondent effectively abused the winding-up framework to add another layer of legal hurdle (and protracted litigation) in the form of a brand new turnkey construction agreement ('TCA'). The impugned JVA was terminated and KIP was yet again re-appointed under the TCA to develop Ibaimas lands with 'new terms' of compensation *via* divesting of Ibaimas lands to KIP and KIP's creditor. In the appellants' attempt to stifle the second chapter of the malicious design within the strict and rigid winding-up framework, the appellants commenced numerous post winding-up applications seeking the court's leave to commence actions to impugn the liquidator's misconduct and to secure an order for the removal of the liquidator. A further unlawful dissipation transpired after the inception of the TCA as KIP (upon being divested equitable rights over Ibaimas's lands under the TCA) hastily 'sold' eight lots of Ibaimas's lands to the second and third respondents. The said sale did not at all confer any monetary gain or advantage to Ibaimas for *pari passu* distribution of proceeds under the winding-up process. The appellants commenced Suit 133 directly against the unlawful prospective recipients of the unlawfully dissipated assets of Ibaimas without having Ibaimas (or the liquidator) as a party. Suit 133 was the main suit in which the appellants had filed their encl. 3 application, applying for a traditional equitable injunction and/or for a statutory injunction under s. 351 of the CA. The issues that arose in this appeal were: (i) whether the judge's dismissal of the appellants' application in encl. 3 proper in law; (ii) whether the appellants' reliance on s. 351 of the CA sought to override

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A the existing winding-up framework to deal with the conduct of the liquidators; (iii) whether the appellants' Suit 133 and application under s. 351 of the CA caused multiplicity of proceedings with other prior pending post-winding-up actions already filed by the appellants; (iv) whether the absence of the liquidator (as a party) and the absence of leave to commence
B an action against the liquidator (under the winding-up framework) was fatal against the appellants' application under s. 351 of the CA (and Suit 133); and (v) whether *res judicata* should apply considering the Court of Appeal had already dismissed the appellant's prior 1912 motion for the order for *ad interim* preservation of property under s. 44 of the Courts of Judicature
C Act 1964.

Held (allowing appeal)
Per Azimah Omar JCA delivering the judgment of the court:

(1) When the winding-up framework seemed to be abused as unscrupulous instruments to frustrate legitimate pursuit by judgment
D creditors, the court must not be too rigid so as to cause undue injustice against creditors who fell victim to the company's 'imaginative' use of the winding-up framework. So in the same manner the maxim *lex specialis derogat legi generali* would apply to insist on the winding-up framework on all matters arising out of a winding-up order, the same
E maxim would equally apply to allow the court to specifically invoke its powers under s. 351 of the CA as against all matters or conducts which specifically seeks to contravene or continue to contravene the CA. And there has never been a rule that both provisions above could not operate simultaneously. (paras 51 & 52)

F **(2)** This court had identified the many stages (chapters) in which the malicious design was perpetuated by Ibaimas with the respondents as its conspirators. In the second chapter of the malicious design, the appellants had indeed initiated numerous post-winding-up actions to impugn the TCA and the misconduct of the liquidator within the
G parameter of the winding- up framework. These post-winding-up actions were actions *in personam* against the liquidator and the liquidator's misconduct in incepting the TCA in clear breach of the consent order and a betrayal of the sheer essence of the winding-up framework. Separately and distinctly, Suit 133 (and the appellants'
H application for s. 351 injunction) were raised out of sheer necessity to cull the continuity of the various contraventions of the CA which were, still is, and may as well be exacerbated by further dealings of Ibaimas's lands by illegal prospective recipients of Ibaimas's dissipated landholdings (being the third chapter to the malicious
I design). Thus, the case herein was action *in personam* against the third parties who unlawfully received or will unlawfully receive the illegally dissipated Ibaimas's lands in order to restrain any further frustration and obfuscation of the law and the creditors' genuine legal

pursuits. Thus, it was clear that the winding- up framework and the remedy under s. 351 of the CA may deal with entirely different parties, different legal principles and requirements (of which both of the two remedies/frameworks were not contradicting one or the other). (paras 52-54)

(3) A s. 351 injunction can co-exist alongside an on-going winding-up framework. Of course, the winding-up framework exists to impugn the company (in liquidation) or the liquidator in the instance of misconduct. Nevertheless, the existence of the winding-up framework does not and should not restrain an aggrieved party to seek relief directly against unlawful recipients or prospective recipients of the dissipated assets of a company in liquidation (in order to curb further obfuscation and dissipation of the assets). (para 58)

(4a) There was no multiplicity of proceedings. The main purpose of Suit 133 was not to impede upon or compel against the liquidator. Instead, it was an *in personam* action against the prospective subsequent recipient of the Ibaimas's lands (who all might knowingly be complicit in Ibaimas's alleged conspiracy, fraud, and obvious breach of the consent order). It was designed to halt any further dealings of Ibaimas's lands that might prematurely stifle the purpose and subject of the appellants' litigation before the appellants are given their rightful day in court. Even if there might be some degree of overlap, the design and purpose of the separate actions remained distinct. (paras 59 & 60)

(4b) Although there was an overlap of a common issue (regarding the validity of the TCA), the commonality still did not negate the distinct nature and objective between an action to impugn the misconduct of a liquidator, and an action to restrain subsequent or prospective unlawful recipients of assets so as to prevent further obfuscation and dissipation of a company's (in liquidation) assets before the proper conduct of liquidation could be concluded. Under s. 540 of the CA, any creditor of the company in liquidation can commence a separate civil action against third party conspirators alongside an ongoing course of winding-up of the company. (paras 61-63)

(5) As the appellants' Suit 133 could separately co-exist with the post winding-up actions without the involvement of Ibaimas (and its liquidator), it could only naturally flow that the appellants were not required to obtain the court's leave under the winding-up framework to commence Suit 133. Thus, the absence of the liquidator and absence of the court's leave to commence an action against the liquidator were not fatal against the appellants' application under s. 351 of the CA (and Suit 133). (para 70)

(6) Although there was a prior dismissal of a 1912 motion under s. 44 of the CJA, it did not at all cause the appellants' application to be caught by the doctrine of *res judicata*. *Res judicata* did not apply here as the merits of the appellant's application for a s. 351 injunction (specifically for ceasing or halting contravention or continue contravention of the CA) has yet to be determined by any other forum. A s. 351 injunction would not be in contradiction with the refusal of the *ad interim* preservation of property injunction as the nature, design, and core purpose of the two different injunctions were entirely dissimilar and distinct to each other. By the classical criteria of a normal injunction for preservation of property, the prior Court of Appeal panel was right to find that the appellants did not have a right *in rem* against Ibaimas's lands so as to hinder the respondents' onwards dealings of Ibaimas's lands. However, a s. 351 injunction was not limited to interest *in rem* against the property. A s. 351 injunction should necessarily be wide enough to cover preservation of property to safeguard an interested/affected party's monetary or commercial interest in the manner in which the liquidation of a company was conducted so as to obtain the proceeds for onwards *pari passu* distribution to Ibaimas's creditors. (paras 71 & 72)

(7) There was a concrete establishment of contraventions of the CA such as (i) within the realm of the CA, the respondents' ignorance and brazen transgression of the consent order was a clear contravention of s. 486(2) of the CA which clearly prescribes that the conduct of liquidation by the liquidator shall remain subject to the control and orders of the court; (ii) the inception and unscrupulous design of the TCA was a far cry from a genuine sale of Ibaimas's lands for the purpose of distribution to Ibaimas creditors. Even if the respondents were to insist that the TCA somehow served to benefit Ibaimas, the inevitable fact remained that the liquidator had not obtained the statutory leave to empower the liquidator to carry on Ibaimas's business; (iii) the clear creation of a new debt, new creditors and obvious undue preference in favour of Ibaimas's new creditors being KIP and the malicious design that clearly reflected Ibaimas's and KIP's intention of eluding all other Ibaimas's genuine creditors while priming KIP to become Ibaimas's preferred creditor. The *factum* of undue preference was exceptionally irrefutable and thus KIP's receipt of the Ibaimas's lands under the TCA would have plainly transgressed upon the rule of *pari passu* distribution under s. 527(10) of the CA and the rule against undue preference under s. 528 of the CA; and (iv) the TCA being a 'continuation' of Ibaimas's business was certainly not within the ambit of an exempted disposition (as the TCA was not at all a plain and genuine sale and liquidation of Ibaimas's lands by the liquidator under Part I of Twelfth Schedule of the CA). Thus, since KIP was well aware that Ibaimas (or the liquidator) had never applied

for the court's leave to carry on Ibaimas's business to execute TCA, then KIP was clearly complicit to the contravention of s. 472(1) and (2) of the CA. (paras 89-98)

(8) The appellants have thus successfully fulfilled all of the elements to warrant the granting of a statutory injunction under s. 351 of the CA. Any further abuse of the winding-up framework so as to prematurely stifle the appellants' pursuit of their rights as creditors of Ibaimas ought not to be allowed. The law and justice lay squarely in favour of allowing the appellants' application for a statutory injunction under s. 351 of the CA so as to preserve the *status quo* while all the serious triable issues be properly and fully determined while deterring any further contravention of the CA *via* the abuse of the nuances and additional requirements under the winding-up framework (which was also a framework under the CA). (paras 47 & 99)

Case(s) referred to:

Allen v. Atalay (1994) 12 ACLC 7 ***(refd)***

American Cyanamid Co v. Ethicon Ltd [1975] AC 396 ***(refd)***

Ann Joo Steel Bhd v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal [2019] 9 CLJ 153 FC ***(refd)***

Dato' Prem Krishna Sahgal v. Muniandy Nadasan & Ors [2017] 10 CLJ 385 FC ***(refd)***

Eadie Voon Architect v. Stylish Houz Development Sdn Bhd (In Liquidation); Koperasi Kemas Negeri Sembilan Bhd & Ors (Interveners) [2022] 10 CLJ 562 HC ***(refd)***

Pop Investments Ltd v. Icapital.Biz Bhd [2025] 2 CLJ 842 HC ***(refd)***

Tan Yoke Kheng (Trading as Niklex Supply Co) v. Lek Benedict And Others [2004] SGHC 84 ***(refd)***

Tay Keong Kok & Ors v. Eastmont Sdn Bhd & Another Appeal [2025] 1 CLJ 583 CA ***(refd)***

Legislation referred to:

Companies Act 2016, ss. 346, 351(1), 472(1), (2), 486(2), 527(10), 528, 540, Twelfth Schedule Part II para 1(a)

Courts of Judicature Act 1964, s. 44

Rules of Court 2012, O. 29 r. 1, O. 45 r. 7(4), O. 92 r. 4

Specific Relief Act 1950, ss. 50, 51

Corporations Act 2001 [Aus], s. 1324

For the appellant - Yap Boon Hau & Tiew Kelly; M/s Mah-Kamariah & Philip Koh

For the 1st & 4th respondents - HR Dipendra, Hoo Kit Yee & Liew Ji Wei; M/s Ramesh Dipendra Jeremiah Law

For the 2nd, 3rd, 5th-7th respondents - Eunice Ong Huey Shen & Ng Wei Ying; M/s Eunice Derek & Co

[Editor's note: Appeal from High Court, Kuala Lumpur; Suit No: WA-22NCC-133-02-2024 (overruled).]

Reported by Suhainah Wahiduddin

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JUDGMENT

Azimah Omar JCA:

Introduction

[1] The appellants had appealed against the decision of the Kuala Lumpur B High Court dated 25 October 2024 in dismissing their application in encl. 3 for an interlocutory injunction order namely, *inter alia*; to restrain each of the respondents (defendants), either by themselves, or through its directors, employees, agents, servants, contractors, or sub-contractors, and/ or solicitors to give any effect to, or take any steps to transfer or vest the lands C or any interest of the lands or create any interest in the lands belonged or belonging to Ibaimas Sdn Bhd to themselves or any other parties, including but not limited to the lands and sales and purchase agreements identified in Schedule A to the notice of application, without prior leave of court or consent in writing by the plaintiffs, pending the disposal of the application D on an *inter parte* basis.

[2] It must be noted that the appellants' application for the injunctive reliefs in encl. 3 was made pursuant to O. 29 r. 1 of the Rules of Court 2012 ("ROC 2012"), and/or ss. 50 and 51 of the Specific Relief Act 1950 ("SRA 1950") and/or pursuant to s. 351 of the Companies Act 2016 ("CA 2016") E and/or O. 92 r. 4 of the ROC 2012. However, the appellants had premised their application primarily under O. 29 r. 1 of the ROC 2012 and s. 351 of CA 2016.

[3] The learned High Court Judge ("the learned judge") had dismissed the appellants' encl. 3. In his two-paged broad grounds, the learned judge found F as follows:

(i) the appellants' application is a typical interlocutory injunction within the parameters of *American Cyanamid Co v. Ethicon Ltd* [1975] AC 396;

(ii) there were no serious questions to be tried on the account of the absence G of the liquidator as a party within Suit 133 as well as the absence of the leave of court to commence an action against the liquidator;

(iii) the remedy sought by the appellants is to impede the acts of the Liquidator (which should be dealt with *via* the winding-up framework); and

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(iv) since, the appellants had already applied in the Shah Alam High Court (insolvency division) for leave to commence action against the liquidator which leave application has yet to be heard, therefore in the absence of the liquidator being made a party (leave to commence action against the liquidator still not obtained), thus, the appellants had not yet I adhered or complied with the due process of law.

[4] In essence, the learned judge had refused to grant any injunctive reliefs to the appellants on the basis that the threshold requirements of granting a typical interlocutory injunction (as prescribed in the case of *American Cynamid* (*supra*)) were not fulfilled. Although, in his broad grounds, despite the fact that the learned judge had found that there was a serious issue of the appellant's right over the properties of Ibaimas Sdn Bhd, he was still of the view that the appellants' rights were only monetary against Ibaimas Sdn Bhd and not *in rem* against Ibaimas Sdn Bhd's lands. The learned judge also found that since the appellants' claim was purely monetary, thus, damages would already be an adequate remedy in case the appellants later succeed in their claim.

[5] It must be observed that from the broad grounds, the learned judge had not at all determined the propriety of a s. 351 injunction which was also within the scope of the appellants' encl. 3. To be precise, the learned judge did not embark on any meaningful determination as to the appellants' reliance on s. 351 of the CA 2016.

[6] At this juncture, before we proceed to deliberate the proprietary of the appellants' appeal, it is pertinent to set out the facts triggering the claim by the appellants which had taken place or transpired involving the parties namely; the appellants, the respondents and Ibaimas Sdn Bhd. With these facts, we would stand to better understand the appellants' complaint and ultimately determine the appellant's appeal in its proper context.

[7] The appellants are creditors of Ibaimas Sdn Bhd (in liquidation) ("Ibaimas"). Ibaimas was a wholly-owned subsidiary of the Holding Group, Kuala Ibai Development Sdn Bhd ("KI Development"). Prior to the winding-up of Ibaimas, Ibaimas's debt owed against the appellants was legally cemented *via* the High Court's decisions in dismissing all of Ibaimas's originating summonses filed against the appellants for a *Fortuna* injunction to restrain the appellants from filing a creditors' petition to wind-up Ibaimas ("*Fortuna* OS").

[8] All of Ibaimas's *Fortuna* OS were heard and dismissed by the same High Court Judge on 1 March 2019 on the primary ground that Ibaimas had admitted all of its debt owed to the appellants ("judgment debt").

First Chapter Of The Malicious Design: Ibaimas's Attempt To Hastily Dissipate Assets (To Frustrate Creditors' Pursuit) By Artificially Creating 'Business' With A 'Newly Incorporated' Co-subsidiary

[9] Before the appellants could move their creditors' winding-up petition (and just four months after the judgment debt was penned down) Ibaimas began to move to dissipate its assets before the creditors could make their move to wind-up Ibaimas.

[10] The alleged scheme first hatched in the guise of a joint venture agreement entered into between Ibaimas and a 'new' co-subsidiary of KI Development, Kuala Ibai Property Sdn Bhd ("first respondent/KIP") on 19 July 2019 ("impugned JVA"). KIP was merely a two Ringgit Malaysia (RM2) corporate vehicle which was incorporated just one week before the inception of the impugned JVA on 12 July 2019.

[11] The impugned JVA was incepted on the alleged false pretext of 'developing' Ibaimas's lands (an endeavour that could have been undertaken by Ibaimas itself as direct owners of the lands). Nonetheless, it was more probable than not that the impugned JVA was engineered as an attempt to dissipate and offload Ibaimas's assets before any of Ibaimas's creditors could act to put Ibaimas in liquidation by artificially creating a 'new debt' that Ibaimas owed against KI Development's 'new' subsidiary (being KIP). Effect of which KIP was able to leverage that 'new debt' as grounds to petition for Ibaimas's liquidation (without any protest from Ibaimas) ahead of all other genuine creditors of Ibaimas ("the malicious design").

[12] Considering the first appellant (Dato' Chang Jong Yu (Dato' Chang)), was also a shareholder of Ibaimas (apart from being Ibaimas's creditors), the appellants caught wind of Ibaimas's Malicious Design and consequently moved Originating Summons No: WA-24NCC-44-01-2022 ("oppression action/OS 44") as an oppression action under s. 346 of CA 2016 on the ground that the impugned JVA was oppressive against the interest of Ibaimas's shareholder (Dato' Chang) as it does not seek to genuinely pursue any commercial benefit to Ibaimas and instead was merely an attempt to dissipate Ibaimas's assets to elude Ibaimas's creditors (which also includes Dato' Chang and the other appellants before us).

[13] It was *prima facie* obvious that the impugned JVA sought to incur even more liabilities against Ibaimas instead of genuinely seeking commercial redress to liquidate Ibaimas's assets to settle Ibaimas's debts. Unsurprisingly, the High Court on 29 November 2022 had allowed the first appellant's oppression action/OS 44.

[14] Aside from (and in furtherance of the malicious design), Ibaimas's assets were attempted to be dissipated *via* KI Development's own resolution dated 3 January 2020 ("impugned resolution") to sell all of the assets held by KI Development's subsidiaries (which of course include Ibaimas). In similar realisation of the malicious design, the appellants also moved Originating Summons No: WA-24NCC-65-02-2020 ("OS 65") to challenge KI Development's resolution as an attempt to fraudulently dissipate Ibaimas's assets.

[15] On 14 July 2020 Ibaimas on its own volition had executed and recorded a consent order before the court (complete with a penal notice under O. 45 r. 7(4) of the Rules of Court 2012) in which Ibaimas (inclusive

of any of Ibaimas's representative in any shape or form) are now restrained by the power of the court from freely dealing with the assets of Ibaimas until and unless Ibaimas obtains prior approval from the first appellant as a substantial shareholder of Ibaimas ("the consent order").

[16] The mechanism of the malicious design was made more apparent considering that Ibaimas's Directors brazenly ignored the penal notice within the consent order and proceeded to sell 13 plots of Ibaimas' lands without the prior consent or approval of Dato' Chang (as was recorded and agreed in the consent order).

[17] At this juncture, both Ibaimas and KIP were aware that they were in clear breach of the consent order, and they would have to 'innovate' a scheme to pivot Ibaimas' position in a circumstance that 'Ibaimas was no longer in control of its affairs' to be caught by the restraining effect of the consent order. And the malicious design would be put further in motion by the hasty incorporation (and immediate positioning) of KIP to become one of Ibaimas's creditors. Against which we can say in confidence that the positioning of KIP was exceedingly far from any genuine commercial gain or purpose.

[18] It has to be reminded that for the longest and majority of time, KIP was non-existent within the roster and sphere Ibaimas's creditor. Within the short span of one week from KIP's incorporation, KIP 'suddenly became' Ibaimas' creditor and in fact became the 'fortuitous' creditor who was 'allowed' to petition for Ibaimas's liquidation without any protest or contention from Ibaimas.

[19] In any case, in furtherance of the malicious design, KIP was hastily incorporated just one week before the inception of the impugned JVA, and on the basis of Ibaimas's 'debt' under the impugned JVA, KIP petitioned for the winding-up of Ibaimas on 2 February 2021 (which was later allowed on 5 April 2021). In consistent pursuit of curbing the malicious design, the appellants moved Suit No. WA-22NCVC-172-03-2021 ("Suit 172") to challenge the impugned JVA.

[20] Nonetheless, as had been schemed within the malicious design, Ibaimas and its cohorts (inclusive of KIP) sought to frustrate the appellant's litigation to challenge the impugned JVA by abusing the winding-up the framework (while utilising the impugned JVA before the existing proceedings in court can even come close to determination) by having KIP petitioning to wind-up Ibaimas as one of Ibaimas's new 'creditor'.

[21] Against the respondent's staunch contention of the appellants' unlawful override of the winding-up framework, we are also aware that the non-involvement of the appellants within the winding-up framework was engineered and forced against the appellants by Ibaimas itself.

[22] The appellants had in fact attempted to be involved in the process of KIP's winding-up process by submitting their respective proof of debts ("PODs") on 10 May 2021. However, despite the consent order and despite the judgment debt confirmed by the High Court, the liquidator had refused to admit and adjudicate the appellants' POD on 9 September 2021.

[23] Thus, it is our considered view that the respondents ought to be estopped from contending that the appellants had intentionally overridden the winding-up framework when it was by the respondents' own intentional exclusion that the appellants were denied involvement in KIP's winding-up of Ibaimas. We will deliberate further on this issue later in this ground of judgment.

Second Chapter Of The Malicious Design: Artificial Relinquishment Of Control To The Liquidator In View Of Frustrating Existing Litigation And The Court's Consent Order

[24] With the KIP's petition to liquidate Ibaimas, Ibaimas was 'primed' to be in a 'backseat position' as Ibaimas had to 'relinquish' control over to the liquidator. And premised on this 'supposed' loss of control, Ibaimas began to hatch the 2nd Chapter of the malicious design, post-winding-up of Ibaimas. *Via* the 'surrender' of control to the liquidator, Ibaimas and KIP effectively:

(i) artificially created a 'scenario' in which the impugned JVA had to be terminated (by the liquidator) as Ibaimas can only continue business in compliance with the winding-up framework and say-so of the liquidator (supposedly with the leave of the court under para. 1(a) of Part II of Twelfth Schedule of CA 2016);

(ii) artificially created a 'scenario' in which the impugned JVA must be replaced with another contract (now to be executed by the liquidator);

(iii) unlawfully and prematurely frustrated and stifled the mass and mess of litigations which were ongoing in impugning the entire exercise of the impugned JVA;

(iv) artificially created a 'scenario' in which Ibaimas may sidestep the binding restraint of the consent order by asserting that Ibaimas under liquidation is no longer a going concern that was bound by the consent order; and

(v) artificially created a 'scenario' in which Ibaimas can simply blame any transgression of the consent order against the liquidator as Ibaimas had already 'lost control' over the company.

[25] It is self-evident that the entire exercise of the second chapter of the malicious design would throw a massive setback in the appellants' genuine pursuit of legal redress against Ibaimas.

[26] Just as the High Court had allowed OS 44 to void the impugned JVA, Ibaimas and the first respondent effectively abused the winding-up framework to add another layer of legal hurdle (and protracted litigation) in the form of a brand-new turnkey construction agreement dated 28 March 2023 (to replace the impugned JVA) ("TCA").

[27] The impugned JVA was terminated and KIP was yet again re-appointed under the TCA to 'develop' Ibaimas land with 'new terms' of compensation *via* divesting of Ibaimas lands to KIP (and to KIP's creditor).

[28] As was astutely highlighted by learned counsel for the appellants, the TCA curiously:

(i) instead incurred more liability as against Ibaimas as the TCA effectively added a 'new creditor' (being KIP) within its roster of creditors to be paid *via* the dissipation and divesting of Ibaimas' lands to KIP;

(ii) instead incurred more liability as against Ibaimas as the terms of TCA also includes settlement terms of a whopping RM5,286,060 to KIP's creditors to redeem Ibaimas lands which were used as collateral for a secured loan taken up by KIP (and not Ibaimas);

(iii) was not at all any authentic and outright sale or liquidation of Ibaimas's assets and instead the continuation of Ibaimas's post-winding-up business which would require the court's leave (a leave which neither KIP nor Ibaimas ever sought to obtain).

[29] We are most aware of the respondents' insistence that the TCA was somehow executed in the best interest of Ibaimas as the payment terms under the TCA would allow the 'redemption' of Ibaimas's lands from the charge held by KIP's secured creditor (which would 'enable' onward liquidation of Ibaimas' lands). This would ring true if not for the fact that this 'necessity' to redeem the lands was artificially created by KIP for the sake of:

(i) artificially justifying the necessity of the TCA; and

(ii) using Ibaimas's lands as collateral for the sake of KIP's monetary gain (not Ibaimas).

[30] It need to be highlighted that in the extremely brief existence of KIP as a RM2 company, Ibaimas and KIP somehow thought that it was appropriate for KIP to incur a secured debt utilising Ibaimas's lands as collateral ('coincidentally' within the same time period in which Ibaimas's creditors were hot on Ibaimas's heels pursuing their debt owed by Ibaimas). Thus, it was infinitely more probable than not that Ibaimas's 'entrapped' position (of having all of its land charged to KIP's secured creditor) was deliberately devised to artificially create the 'necessity' of the TCA.

[31] Succinctly speaking, Ibaimas's lands would not have been held at ransom in the first place if not for Ibaimas and KIP's own wicked scheme to incur more 'inter-subsidiaries' liability and debt between KI Development's own array of subsidiaries. In any case, it was glaring to us that neither KIP's 'abrupt' secured loan using Ibaimas's lands nor the entry of the TCA would serve to provide any commercial or monetary advantages to Ibaimas. Instead, the two new liabilities serve to do the exact opposite (in incurring more liabilities against Ibaimas).

[32] The essence of abuse here is even more glaring considering that any action impugning the validity of the TCA can seemingly be postulated as an action against the 'misconduct' of the liquidator (and thus would now require the leave of the court before such action can be pursued against the liquidator). And this is exactly the legal hurdle that the respondents here are incessantly contending against the appellants repetitively.

[33] In the appellants' attempt to stifle the second chapter of the malicious design within the strict and rigid winding-up framework, the appellants had commenced numerous post-winding-up applications seeking the court's leave to commence actions to impugn the liquidator's misconduct in refusing to admit the appellants' POD *via* Application No: BA-28PW-14-01-2024 ("PWU-14"), to impugn the liquidator's misconduct in incepting the TCA *via* Application No: BA-28PW-15-01-2024 ("PWU15"), and to secure an order for the removal of the liquidator *via* Application No: BA-28PW-16-01-2024 ("PWU16")

[34] And it is the frustration of all prior litigation against the impugned JVA (prior to the winding-up) and the requirement for the leave of the court (post-winding-up) to commence an action against the TCA (and the liquidator) that had left Ibaimas entirely vulnerable for dissipation of assets. All previous litigation by the appellants was frustrated, and now the appellants must undertake protracted litigation and time to obtain leave so as to cease the malicious design. And in the time that the appellants had to plow through the red tapes of the winding-up framework, Ibaimas's lands remained free for further unlawful dissipation and obfuscation (which brings the parties to the third chapter of the malicious design).

Third Chapter Of The Malicious Design: Onwards Dissipation Of Assets To 'Third Parties'

[35] This further unlawful dissipation was exactly what had transpired after the inception of the TCA. On 25 October 2023, KIP (upon being divested equitable rights over Ibaimas' lands under the TCA) hastily 'sold' eight lots of Ibaimas' lands to Modern Mode Sdn Bhd ("second respondent/MMSB") and Saham Terbilang Sdn Bhd ("third respondent/STSB"). The terms of the sale of Ibaimas' lands to MMSB and STSB was certainly suspicious considering the fact that:

(i) the proceeds from the sale was to be paid to KIP (not Ibaimas). Thus, the onward sale of Ibaimas' land to MMSB and STSB did not at all confer any monetary gain or advantage to Ibaimas for *pari passu* distribution of proceeds under the winding-up process; and

(ii) the paid-up share capital of MMSB and STSB was merely RM2. As mere RM2 shell companies, it was plainly inconceivable that either MMSB or STSB would have the financial capacity to pay the RM5,261,867.52 purchase price for the Ibaimas's Lands; and

(iii) both MMSB and STSB to date have failed to adduce cogent evidence of paying the purchase price for the Ibaimas's Lands.

[36] In an attempt to stamp-out further dissipation under the third chapter of the malicious design, the appellants were hard-pressed to seek a legal remedy that can counteract against Ibaimas's and the respondents' abuse of the winding-up framework (in further delaying justice) and to immediately cease any further dealings against Ibaimas's lands without having to go through the long and arduous process of obtaining leave before commencing an action. Thus, the appellants had commenced Suit No: WA-22NCC-133-02-2024 ("Suit 133") directly against the unlawful prospective recipients of the unlawfully dissipated assets of Ibaimas without having Ibaimas (or the liquidator) as a party.

[37] We must emphasise that Suit 133 was the main suit in which the appellants had filed their encl. 3 application, applying for a traditional equitable injunction and/or for a statutory injunction under s. 351 of CA 2016.

[38] Instead what is certain here was the fact that the appellants did not undertake Suit 133 willy-nilly and had only done so after ensuring that all alternative measures had already been exhausted.

[39] In the course of all these litigations, it was exceedingly intriguing that further events had transpired which further revealed the cracks in the TCA's alleged *bona fide* intent. It was later discovered that despite the multi-million value of the TCA, the TCA was incepted with so much haste and very little genuine care considering the fact that both Ibaimas and KIP were intentionally ignorant of the fact that KIP as a RM2 shell company was not even a licensed or registered developer with the Construction Industry Development Board ("CIDB") to legally undertake the multimillion development under the TCA. This glaring illegality was revealed when CIDB itself issued a stop work order against KIP on 20 February 2024 so as to ensure that any works under the TCA to immediately cease. The factual events do not end here.

[40] Further compounding the dubious nature of the TCA, Kuala Terengganu City Council also revoked its planning approval for the development of all Ibaimas's lands on 20 March 2024.

[41] We must state here that the chronology of events set out above, presents a unique and at the same time critical issue in which the court is faced with reality and practical (or impractical) reality, rigidity, and shortcomings of the winding-up legal framework that may be open for abuse and obfuscation.

[42] At the same time, the appeal before us also presents an opportunity for the court to utilise an existing (albeit scarcely and conservatively used) civil remedy within our local company law framework to curb immensely creative, imaginative, and novel ways in which the winding-up framework can be abused by companies to frustrate a creditor's pursuit and litigation and unlawfully dissipate assets (in manners which are either against the Companies Act 2016 ("CA 2016") itself or in contradiction of the sheer purpose and base object of company liquidation.

[43] We are also aware that a prior Court of Appeal panel had dismissed the appellants' motion for an *ad interim* preservation order under s. 44 of the Courts of Judicature Act 1964 ("CJA 1964") (which was filed pending the determination of the appeal before us) ("motion 1912"). Nonetheless we are aware that the prior dismissal by the Court of Appeal was premised on an entirely different law (and for an entirely different form of remedy) and had been determined on the premise of a classical interlocutory prohibitory injunction (and not a statutory injunction under s. 351 of CA 2016). Of course, the elements of a typical prohibitory injunction would examine the element of the adequacy of damages and the nature of interest held by the appellant. The prior Court of Appeal panel had dismissed motion 1912 on the primary grounds that:

(i) the appellants' interests were *in personam* for monies against Ibaimas and not *in rem* against Ibaimas's lands; and

(ii) since the appellants' interests were monetary in nature, damages would be an adequate remedy if in case the appellants succeed in their case.

[44] However, we are certain that *res judicata* does not apply especially considering the fact that the elements warranting a statutory injunction under s. 351 of CA 2016 are completely different and entirely wider than that of a classical prohibitory injunction (and are not tethered or limited to only rights *in rem* against a company's properties).

The Appeal Before Us

[45] Despite the plethora of triable issues surrounding Suit 133, the High Court still failed to appreciate the urgency of the appellants' application to restrain the respondents from further perpetuating the third chapter of the

malicious design and failed to consider the corner in which the appellants were pushed into by the respondents' continued contravention of the CA 2016 (inclusive of the respondents' abuse of the winding-up framework). The appeal before us involves numerous legal and factual issues which all of them culminated in the singular issue of whether or not the learned judge's dismissal of the appellants' application in encl. 3 was proper in law.

[46] It must also be highlighted that the appellants did not reach out to a remedy outside of the winding-up framework (under s. 351 of CA 2016) and had only done so after all avenues to injunct and halt any further dissipation of assets had already been exhausted.

[47] Against the backdrop of all the facts above, it should have been clear that the law and justice lie squarely in favour of allowing the appellants' application for a statutory injunction under s. 351 of CA 2016 so as to preserve the *status quo* while all the serious triable issues be properly and fully determined while deterring any further contravention of the CA 2016 *via* the abuse of the nuances and additional requirements under the winding-up framework (which is also a framework under the CA 2016).

Whether Or Not The Learned Judge's Dismissal Of The Appellants' Application In Enclosure 3 Was Proper In Law

[48] From the outset it was clear that the learned judge had unfortunately veered his deliberation into an entirely wrong and improper plane of legal examination. It was entirely wrong for the learned judge to conclude his decision on the premise of a typical interlocutory application as to the adequacy of damages, and the insufficiency of the appellants' undertaking as to damages. This error was especially glaring considering that the appellants' application for a statutory injunction was clearly premised on s. 351 of the CA 2016 which provides entirely specific and distinct elements of which would warrant the granting of a s. 351 injunction.

[49] Since the learned judge had not at all embarked on any meaningful discourse or deliberation as to the propriety of the appellants' reliance on s. 351 of the CA 2016, it shall now fall upon our shoulders to properly examine the propriety of the appellants' pursuit for a statutory injunction under s. 351 of the CA 2016.

[50] Before we embark on the substantive examination of the appellants' application for a s. 351 injunction, it is imperative that we first debunk the slew of technical and procedural hurdles the respondents had thrown at the appellants:

(i) the appellants' reliance on s. 351 of the CA 2016 seeks to override the existing winding-up framework to deal with the conduct of liquidators;

(ii) the appellant's Suit 133 and application under s. 351 of the CA 2016 causes multiplicity of proceedings with other prior pending post-winding-up actions already filed by the appellants;

A (iii) the absence of the liquidator (as a party) and the absence of leave to commence an action against the liquidator (under the winding-up framework) is fatal against the appellants' application under s. 351 of the CA 2016 (and Suit 133); and

B (iv) *res judicata* should apply considering the Court of Appeal had already dismissed the appellants' prior 1912 motion for the order for *ad interim* preservation of property under s. 44 of the CJA 1964.

Whether The Appellants' Reliance On Section 351 Of The CA 2016 Seek To Override The Existing Winding-up Framework To Deal With The Conduct Of Liquidators

C

[51] One of the most vehement technical contentions led by the respondents was that since Ibaimas is already in liquidation, all post-winding up matters must necessarily only be ventilated within the winding-up framework of the law. If not for the glaring malicious design, this principle D would ring true and be applicable. However, when the winding-up framework seems to be abused as unscrupulous instruments to frustrate legitimate pursuit by judgment creditors, the court must not be too rigid so as to cause undue injustice against creditors who fell victim to the company's 'imaginative' use of the winding-up framework.

E **[52]** So in the same manner the maxim *lex specialis derogat legi generali* would apply to insist on the winding-up framework on all matters arising out of a winding-up order, the same maxim would equally apply to allow the court to specifically invoke its powers under s. 351 of the CA 2016 as against all matters or conducts which specifically seeks to contravene or continue to F contravene the CA 2016. And there has never been a rule that both provisions above could not operate simultaneously. Hence the reason we have carefully identified the many stages (chapters) in which the malicious design was perpetuated by Ibaimas with the respondents as its conspirators. In the second chapter of the malicious design, the appellants had indeed initiated numerous post-winding-up actions to impugn the TCA and the G misconduct of the liquidator within the parameter of the winding-up framework. These post-winding up actions were actions *in personam* against the liquidator and the liquidator's misconduct in incepting the TCA in clear breach of the consent order and a betrayal of the sheer essence of the winding-up framework.

H

[53] Separately and distinctly, Suit 133 (and the appellants' application for s. 351 injunction) were raised out of sheer necessity to cull the continuity of the various contraventions of the CA 2016 which were, still are, and may as well be exacerbated by further dealings of Ibaimas's lands by illegal I prospective recipients of Ibaimas dissipated landholdings (being the third chapter to the malicious design). Thus, the case before us was an action *in personam* against the third parties who unlawfully received or will unlawfully

receive the illegally dissipated Ibaimas's lands in order to restrain any further frustration and obfuscation of the law and the creditors' genuine legal pursuits.

[54] Thus, it was clear to us that the winding-up framework and the remedy under s. 351 of the CA 2016 may deal with entirely different parties, different legal principles and requirements (of which both of the two remedies/frameworks are not contradicting one or the other).

[55] Locally *per se* we have yet to have a wealth of literature or precedents on the invocation of s. 351 of the CA 2016. Nonetheless we are most aware that s. 351 of the CA 2016 is in *pari materia* with Australia's s. 1324 of the Corporations Act 2001. Thus, decisions from this Commonwealth jurisdiction can be most valuable as a guiding light for us to navigate the nuance of s. 351 of the CA 2016.

[56] As to the harmonious simultaneous operation of both the winding-up framework and s. 351 of the CA, we are beckoned to refer to the Australian decision in *Allen v. Atalay* (1994) 12 ACLC 7 ("*Atalay*") in which the Supreme Court of Victoria had invoked its discretion to grant a statutory injunction to protect the interest of creditors against the unlawful manner in which a debtor-company's asset was liquidated at undervalue. Therefore, there has already been a precedent that the s. 351 remedy can simultaneously exist (and be raised) with an ongoing winding-up process. In fact, quite apart from the winding-up framework, the creditors in *Atalay* commenced an action for statutory injunction against the perpetrator of the unlawful dissipation himself (being one of the company's directors) and not against the company. Hayne J in *Atalay* astutely held that:

> … it is in my view **very arguable that a creditor having a right to prove in a liquidation of a company** may be a person whose interests are affected by a contravention which is alleged to have **led to the diminution in the value of a claim against the company.** (emphasis added)

[57] Closer to our neighbouring shores, the Singapore High Court had also applied the legal principle in *Atalay* in the case of *Tan Yoke Kheng (Trading As Niklex Supply Co) v. Lek Benedict And Others* [2004] SGHC 84:

> **I was satisfied that the plaintiff had *locus standi*** to make the application under s 409A of the Companies Act: see *Allen v. Atalay* (1993) 11 ACSR 753 which involved the transfer of assets at undervalue between two companies with a common board of directors and where it was held that a **creditor having a right to prove in the liquidation of a company may be a person whose interests are affected by a contravention of the Corporation Act,** Victoria, Australia. (emphasis added)

[58] In following the precedents above, it is resoundingly clear that a s. 351 injunction can co-exist alongside an ongoing winding-up framework. Of course, the winding-up framework exists to impugn the company (in liquidation) or the liquidator in the instance of misconduct. Nevertheless, the existence of the winding-up framework does not and should not restrain an aggrieved party to seek relief directly against unlawful recipients or prospective recipients of the dissipated assets of a company in liquidation (in order to curb further obfuscation and dissipation of the assets).

Whether The Appellants' Suit 133 And Application Under Section 351 Of The CA 2016 Cause Multiplicity Of Proceedings With Other Prior Pending Post-winding Up Actions Already Filed By The Appellants

[59] There was no multiplicity of proceedings. The main purpose of Suit 133 is not to impede upon or compel against the liquidator. Instead, it is an *in personam* action against the prospective subsequent recipient of the Ibaimas lands (who all might knowingly be complicit in Ibaimas's alleged conspiracy, fraud, and obvious breach of the consent order). It was designed to halt any further dealings of Ibaimas's land that might prematurely stifle the purpose and subject of the appellants' litigation before the appellants are given their rightful day in court. Even if there might be some degree of overlap, the design and purpose of the separate actions remain distinct.

[60] In any case, the law provides remedies for concurrent hearings (either *via* joinder of actions or for cases to be heard together). In this manner, the court would be able to do a greater extent of justice by both preserving the *status quo* and determining the core litigation without risking unlawful dissipation of assets pending the determination by the court.

[61] Of course, ideally the issue of the TCA's validity be disposed of by one singular forum to avoid redundancy, contradiction, or multiplicity of proceedings. Nonetheless, matters are typically less than ideal and it is also commonplace that multiple litigations were taken up against different parties despite the fact that there might be a degree of overlap between multiple actions. Especially in the appeal before us, although there is an overlap of a common issue (regarding the validity of the TCA), the commonality still does not negate the distinct nature and objective between an action to impugn the misconduct of a liquidator, and an action to restrain subsequent or prospective unlawful recipients of assets so as to prevent further obfuscation and dissipation of a company's (in liquidation) assets before the proper conduct of liquidation can be concluded.

[62] As highlighted by learned counsel for the appellants, if we were to go by the respondents' logic, then the very core of the winding-up framework as a safeguard to justly administer the liquidation of a company would be otiose and be betrayed. If any and all matters involving other third parties

other than the liquidator (or the company in liquidation) must mandatorily be roped in within a singular action within the winding-up framework, then the additional leave requirement in the winding-up framework would be ripe for abuse. Creditors would have their hands tied (in protracted litigation just to obtain the court's leave) while during the same time, other third-party co-conspirators to the liquidator remain free to continue to deal with the dissipated assets as they are supposedly 'immune' from any civil jurisdictions until and unless the creditor obtains the court's leave within the winding-up framework to impugn the liquidator's misconduct. In that time, the dissipated assets would further obfuscate the law as the assets would have already been transferred through layers upon layers of other 'innocent' third parties.

[63] Hence, the reason our own local company law framework had already anticipated instances in which the fraudulent conduct of a company's liquidation was further perpetuated by third parties complicit to the fraudulent conduct under s. 540 of the CA 2016. Under this provision, any creditor of the company in liquidation can commence a separate civil action against those third-party conspirators alongside an ongoing course of winding-up of the company. Section 540(1) of CA 2016 accordingly reads:

> **If in the course of the winding-up of a company** or in any proceedings against a company **it appears that any business of the company has been carried on with intent to defraud the creditors** of the company or creditors of any other person or for any fraudulent purpose, **the Court on the application of the** liquidator or **any creditor** or contributory of the company, may, if the Court thinks proper so to do, **declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible,** without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs. (emphasis added)

[64] Thus, the respondents' contention on multiplicity of proceedings runs a foul against this very statutory provision. The same safeguard (previously under s. 304 of the 1965 regime) had indeed been used to suppress continued business of a company in liquidation which by design dissipates the assets of the company and consequently defrauds the creditors of their rightful proceeds from the liquidation. We refer to the Federal Court case of *Dato' Prem Krishna Sahgal v. Muniandy Nadasan & Ors* [2017] 10 CLJ 385; [2018] 2 MLJ 693 ("*Sahgal*").

[65] In *Sahgal*, despite the company already in liquidation and despite the fact that the dissipation of the assets occurred during the course of liquidation, the creditor (the company's own employees) had commenced civil action outside the winding-up framework directly against the party who were complicit to the unlawful dissipation of the company's assets (being the company's own Executive Managing Director).

[66] In *Sahgal*, the creditors were the company's own employees who were all withheld from the company's EPF and SOCSO contributions. As the company's contributions to EPF and SOCSO were essentially monies owed to the employees, the employees were deemed to be the creditors of the company in liquidation. Very similar to the appeal before us, it came to light in *Sahgal* that there were transactions which purported to add more liabilities against the company while the company's assets were transacted out of the company as a result of this continued business. This dissipation of monies caused a further shortfall in the company's ability to liquidate and pay its creditors. Thus, the Federal Court found that the creditors were well within their rights to initiate a separate suit against the third party (other than the company) for that third party's involvement in the fraudulent dissipation of company assets:

> [60] The *appellant, who was the Executive Managing Director of CNLT,* was aware of the claim made by the employees. The appellant even lodged statement of affairs dated 23 April 2008 and 24 June 2008 after the liquidators were appointed giving outstanding sums due to the employees …
>
> [62] Having proved that they were entitled to the sum claimed which included the outstanding wages and other statutory emoluments, *the employees were therefore the creditors of CNLT.*
>
> …
>
> [82] The second was the issuance of three cash cheques in a total sum of RM160,000 dated 11 September 2007 and were encashed on 12 September 2007 *notwithstanding that an order for the appointment of provisional liquidators dated 6 September 2007 was served on CNLT* on 12 September 2007. These cheques were issued and encashed by the seventh defendant, the Human Resource Director. From the evidence, the learned trial judge found that they were advances to the sevent defendant and they were approved by the appellant.
>
> [83] From these payments, the learned trial judge held that this *amounted to siphoning out a sum of RM160,000 which would have been available to the unsecured creditors or the employees if it had not been dissipated in this manner.*
>
> [84] The third was the failure of CNLT to remit contributions to EPF and SOCSO and to make payment to IRB despite deductions having been made. The learned trial judge held that the failure to remit these statutory payments from August 2007 when considered in the context of other payments, amounted to a deliberate omission, with *dishonest intention of channelling those funds out of CNLT in favour of preferred unsecured creditors and shareholders.*
>
> …

[93] As at 23 April 2008, there was cash of RM155,134 in the bank account of CNLT, whilst outstanding owing to the employees was around RM1,440,154. *The appellant and CNLT continued to carry on business and to incur debts* at a time when there was to their knowledge no reasonable prospect of the employees ever receiving payment of their salary or their statutory contribution.

[94] On the facts of the case, *we agreed with the findings of the courts below that fraudulent trading within s. 304 of the Act had been made out* and the appellant was liable to the employees. (emphasis added)

[67] It is crucial to note from the Federal Court's decision in *Sahgal* that:

(i) the employees cum creditors of the company's civil action against the Executive Managing Director did not involve the company or the liquidator as parties in their suit;

(ii) despite the dissipation had occurred during the time of the provisional liquidator's control, it was not mandatory that any and all unlawful dissipation of company assets during liquidation must necessarily be meted out personally against the company in liquidation (or the liquidator) or must mandatorily be commenced *via* a post-winding up action within the winding-up framework; and

(iii) it was well within the creditors' rights to pursue an in personam action against the third party involved in the fraudulent conduct of the company's business in liquidation without having to resort to the winding-up framework.

[68] The creditors' rights to elect for a separate and direct action (beyond the winding-up framework) against third parties (and without the involvement of the company in liquidation) had been restated in a very recent Court of Appeal decision in *Tay Keong Kok & Ors v. Eastmont Sdn Bhd & Another Appeal* [2025] 1 CLJ 583; [2024] 5 MLJ 683:

[49] Accordingly, we affirm that *in order for the court to invoke s. 540 of the CA 2016 it is unnecessary for the present suit to have been instituted in either the winding-up court or in any proceedings against the company* such as in the court which heard the matter against Mega Planner in Suit 51, and for which the JID had been obtained by the plaintiff against the company. *The plaintiff is perfectly entitled to file a separate action against the directors or other persons,* as the High Court in this instant case is vested with the jurisdictional authority under s. 540 to hear and decide on the instant suit.

[50] For further emphasis, we state that this position is also in congruence with *the very objective of s. 540 of the CA 2016,* as can be immediately seen from the following judicial pronouncements in no fewer than five different cases, *none of which lists the requirement, as is now posited by the defendants, that the fraudulent trading action must be commenced in the winding-up court or in the same action taken against the company.*

A …

[57] *We therefore conclude* this issue by stating that whilst s. 540 can be engaged only 'in the course of the winding-up of a company or in any proceedings against a company', as this court has made abundantly clear in *Chin Chee Keong, this does not translate into a proposition that the fraudulent trading action against the alleged defaulters, like presently, must be pursued in the winding-up court itself or in the same action taken against the company.*

B (emphasis added)

[69] With the authorities above in mind, it is clear that the respondents' insistence on a supposed multiplicity of proceedings was certainly devoid of any merit. The respondents' insistence that Suit 133 has the final effect of impeding against the conduct or impugning the misconduct of the liquidator is plainly misconceived and a hyper-simplification of the laws surrounding the appellants' actions. We reiterate that the liquidator's role in perpetuating the second chapter of the malicious design (in the unlawful inception of the TCA) indeed is misconduct personal to the liquidator and an action to impugn such misconduct should be meted out within the parameters of the winding-up framework. However, KIP and the other respondents' voluntary involvement (and complicity) to further fraudulently cement the unlawful dissipation of assets (by onwards and further dealing of Ibaimas's lands) was a conduct to defraud the creditors personal to the respondents themselves. Thus, the post-winding up action against the liquidator and the civil action against the respondents can simultaneously co-exist as separate actions.

Whether Absence Of The Liquidator (As A Party) And The Absence Of Leave To Commence An Action Against The Liquidator (Under The Winding-Up Framework) Is Fatal Against The Appellants' Application Under Section 351 Of The CA 2016 (And Suit 133)

[70] We are of view that our answers at length under heading C(i) and C(ii) would also naturally answer C(iii) in the negative. We already found that the appellants' Suit 133 can separately co-exist with the post-winding up actions without the involvement of Ibaimas (and its liquidator). Thus, it can only naturally flow that the appellants were not required to obtain the court's leave under the winding-up framework to commence Suit 133. Thus, the absence of the liquidator and absence of the court's leave to commence an action against the liquidator was not fatal against the appellants' application under s. 351 of the CA 2016 (and Suit 133).

Whether Res Judicata Should Apply Considering The Court Of Appeal Had Already Dismissed The Appellant's Prior 1912 Motion For The Order For Ad Interim Preservation Of Property Under Section 44 Of The CJA 1964

[71] We have briefly found earlier in this judgment that the existence of the prior dismissal of the 1912 motion under s. 44 of the CJA 1964 does not at all cause the appellants' application here to be caught with the doctrine of

res judicata. As a summation, we first reiterate that *res judicata* does not apply here as the merits of the appellant's application for a s. 351 injunction (specifically for ceasing or halting contravention or continuing contravention of the CA) has yet to be determined by any other forum. We are minded that the Court of Appeal (COA) have previously dismissed the appellants' motion for *ad interim* preservation of assets, but we are also minded that the previous motion was undertaken under the premise of a classical or normal injunction (where the threshold and elements were entirely different from a s. 351 injunction).

[72] A s. 351 injunction would not be in contradiction with the refusal of the ad interim preservation of property injunction as the nature, design, and core purpose of the two different injunctions are entirely dissimilar and distinct to each other. By the classical criteria of a normal injunction for the preservation of property, the prior Court of Appeal panel was right to find that the appellants did not have a right *in rem* against Ibaimas's lands so as to hinder the respondents' onward dealings of Ibaimas's lands.

[73] However, a s. 351 injunction is not limited to interest *in rem* against the property. A s. 351 injunction should necessarily be wide enough to cover the preservation of property to safeguard an interested/affected party's monetary or commercial interest in the manner in which the liquidation of a company was conducted so as to obtain the proceeds for onwards *pari passu* distribution to Ibaimas's creditors.

[74] Even if the appellants do not hold any right *in rem* against Ibaimas's lands, s. 351 is sufficiently wide enough to also cover the appellants' commercial or monetary interest in the manner in which the liquidator deals with Ibaimas's assets so as to properly liquidate Ibaimas's assets for the sole purpose of *pari passu* distribution of the proceeds of the liquidation process.

[75] Distinctively different from a classical interlocutory or prohibitory injunction for the preservation of property, the threshold of 'interest' of a creditor under s. 351 of the CA 2016 is not dependent on the 'nature' of the creditors' interest either in personam against persons or *in rem* against properties. Nor were the creditors' interests being subject to the question of whether or not monetary damages would be an adequate remedy.

[76] The High Court very recently has astutely deliberated on the threshold of 'interest' within the ambit of s. 351 of the CA 2016 in the case of *Pop Investments Ltd v. Icapital.Biz Bhd* [2025] 2 CLJ 842; [2024] MLJU 2611:

> [46] The language employed in the provision is unambiguous and unequivocal in conferring the right to seek injunctive relief upon a person whose interests are affected by a company's contravening conduct. *The term "interest" in this context should be given a broad and liberal interpretation to include not only strict legal or proprietary interests but also legitimate economic, commercial, or business interests that are directly and adversely affected by the company's conduct.*

> [47] *A narrow construction of the term "interest" that is limited to only legal or proprietary interests would unduly restrict the scope and application of Section 351 and would be contrary to the legislative intent* of providing a wide statutory remedy to protect the interests of various stakeholders against a company's contravening conduct. The broad interpretation of "interest" is necessary to give full effect to the statutory purpose of Section 351 in promoting corporate compliance and protecting the legitimate interests of persons dealing with or affected by the company's actions.
>
> …
>
> [50] The court in *Broken Hill Proprietary* further clarified that it is not necessary for the applicant to show personal rights of a proprietary nature or any special injury arising from a breach of the statute. This clarification is significant as it establishes that the applicant need not have a strict legal or proprietary interest, nor suffer any special injury, to have standing under the provision. It is sufficient for the applicant to demonstrate an interest that goes beyond that of a mere member of the public.
>
> …
>
> [52] Given the persuasive value of the Australian case law and the similarity in the statutory language, the court agrees that that the broad interpretation of "interest" adopted in *Broken Hill Proprietary* and its progeny should be applied to Section 351 of the CA 2016. This approach ensures consistency in the interpretation of the provision and gives effect to the legislative intent of providing a wide statutory remedy to protect the interests of persons affected by a company's contravening conduct. (emphasis added)

[77] The entirety of the appellants' reliance on s. 351 of the CA 2016 had yet to be determined by any forum. To assume that the appellants' 'interest' under s. 351 of the CA 2016 had already been determined by the COA's dismissal of the motion 1912 is plainly wrong and erroneous.

[78] It is trite law that *res judicata* only applies when a matter has already been decided on its merits or substance. Thus, since both the learned judge and the COA in determining motion 1912 had never deliberated on the appellants' rights under s. 351 of the CA 2016, it was clear to us that the appellants' application here and Suit 133 ought not be barred by *res judicata*.

[79] We shall proceed to determine the propriety of the appellants' reliance on the provision in a later part of this judgment. Thus, we also answer C(iv) in the negative in that *res judicata* does not apply against the appeal before us.

Whether The Appellants Are Entitled To Rely And Seek A Remedy Of A Statutory Injunction Under Section 351 Of The CA 2016

[80] At this juncture, it is crystal-clear to us that all of the technical hurdles that the respondents had thrown against the appellants do not at all hold water. Thus, we shall proceed to determine the substance of the appellants'

application for s. 351 injunction here (considering the learned judge had not properly done so in his broad grounds). It is opportune to first appreciate the provision itself in its entirety:

> 351. (1) Where a person has engaged, is engaging or intends to engage in conduct that constituted, constitutes or would constitute –
>
> a. a contravention of this Act;
>
> b. an attempt to contravene this Act;
>
> c. an attempt that aids, abets, advises or procures a person to contravene this Act;
>
> d. an attempt to induce, whether by threats, promises or otherwise, a person to contravene this Act;
>
> e. an attempt by which any person would be in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
>
> f. an attempt of conspiracy with others to contravene this Act,
>
> the Court may, on the application of the Registrar, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

[81] The wording of s. 351(1) of the CA 2016 is plain and unambiguous. A literal reading of the provision would sufficiently reveal the following elements to be fulfilled in order to succeed in an application under the provision:

(i) disjunctively, either a person has already engaged or constituted (in the past and still continues at present) OR intends to engage or intends to constitute (not yet occurred and may occur in the future);

(ii) disjunctively, any of the contravening acts as prescribed under subsections (a) to (f); and

(iii) disjunctively, of which the act or impending act may already have affected (in the past), OR presently still affect, OR may in the future affect the interest of the applicant.

[82] In gist, the core elements under s. 351(1) of the CA 2016 primarily concern the occurrence or the future impending occurrence of contravention against the Companies Act 2016 in which the contravention (or the impending contravention) has affected (or shall affect) the interest of the applicant.

[83] It is pertinent to note that the language employed in this provision is clearly intended to confer the court with a wide array and scope of authority to be vigilant of any form of contravention against the Companies Act 2016 notwithstanding whether the contravention had already occurred or had yet to occur. It was clear to us that this provision provides the ideal remedy against the likelihood of further obfuscation and dissipation of Ibaimas' lands by third parties (being the respondents) if in case Ibaimas' lands eventually falls into the hands of KIP in clear breach of the consent order (and in clear contravention of s. 486(2) of the CA 2016).

[84] As to the element of the appellants' interest or *locus standi* to rely on s. 351(1) of the CA 2016, we believe that we have at long lengths deliberated on the fact that the appellants' interest as creditors *in personam* against the proper and just administration of the winding-up process would indubitably be affected by the respondents' onward perpetration of the third chapter of the malicious design (which was also a continuation of contraventions of the CA perpetrated by Ibaimas and the liquidator in the first and second chapters of the malicious design). Consequently, the element of the appellants' interest being affected (or will be affected) would also be proven as indeed the onward dissipation of Ibaimas's assets would indeed affect the final proceeds to be distributed to the *pari passu* creditors.

[85] Thus, the remainder element to be examined is only the conduct of or the future conduct of the respondents which would be a contravention against the Companies Act 2016 within any of the forms of conduct prescribed under sub-ss. (a) to (f) of s. 351(1) of the CA 2016.

The First Contravention Of The CA 2016 (Against Section 486(2) Of The CA 2016)

[86] Distinctly aside from the issue of the liquidator's misconduct of entering into the TCA, the first respondent as a RM2 shell company under the influence of Ibaimas (as co-subsidiaries) and KI Development (as the holding company) had counter-signed the TCA in full knowledge and awareness of the subsisting consent order which binds Ibaimas (and even the liquidator upon the winding-up of Ibaimas). It was plainly wrong for KIP to feign ignorance of the survivability of the consent order which would restrain Ibaimas (and even the liquidator) even after the winding-up of Ibaimas. Neither the liquidation would negate the enforceability of the consent order nor would the relinquishment of control to the liquidator would allow the liquidator to act in manners that would circumvent the consent order. There are both case laws and even statutory provisions to support this principle. We first refer to the very recent decision in *Eadie Voon Architect v. Stylish Houz Development Sdn Bhd (In Liquidation); Koperasi Kemas Negeri Sembilan Bhd & Ors (Interveners)* [2022] 10 CLJ 562; [2023] 7 MLJ 367 which had clearly held that a consent order recorded before the court shall survive a winding-up of the company and shall similarly be enforceable against the liquidator (in the same manner it was enforceable against the company prior to the liquidation):

[64] The company's EOT application also signifies that the company regarded the first order as a consent agreement; therein it refereed to the first order as 'Perjanjian Persetujuan bertarikh 26 Februari 2019'.

…

[66] *The first order was made before the winding-up petition and the winding-up order. Thus, as the company is bound by the consent order, so is the liquidator.*

[67] In the liquidator's application, the liquidator did not apply to set aside the first order or directly challenge its validity. *It is trite law that the first order is valid and enforceable until it is set aside.* There is substance to the Koperasi's contention that *the liquidator's application is an attempt to circumvent it.*
(emphasis added)

[87] We also refer to the Federal Court decision in *Ann Joo Steel Bhd v. Pengarah Tanah Dan Galian Negeri Pulau Pinang & Anor And Another Appeal* [2019] 9 CLJ 153; [2020] 1 MLJ 689 in which the Federal Court had clearly pronounced that no party can by its own self (being Ibaimas, or the liquidator or the respondents) determine that a binding order of the court need no longer be observed. If indeed the respondents genuinely believed that the consent order was no longer binding, then it becomes incumbent upon the respondents to formally apply to the court to set aside the consent order of which the respondents to date have failed and refused to file any such application. In such circumstances, the sanctity of the consent order must strictly be observed notwithstanding the subsequent liquidation of Ibaimas:

[65] The fundamental principle which is pivotal in all these decisions, is *that the sanctity of a court order must at all times be observed,* and a party bound by that order of a court *has no business deciding for himself that a binding order of a court need not be observed* because in his view it is not valid. If court orders are allowed to be ignored with impunity, it will ruin the authority of judicial order, which is the core of all judicial systems. In line with our jurisprudence, court orders must be respected and complied with. *There will be no end to litigation if parties are allowed to determine for themselves that any order of the court would be observed or otherwise.*

[66] It is, therefore, a long-established principle of law that one may apply to set aside an order of a superior court but it must be made in a direct and specific proceeding filed for that purpose be it in the same proceedings or a separate one. It cannot be contested merely by raising it as defences in a suit as being undertaken in these appeals. The underlying reason for this legal jurisprudence to be adhered to, is not difficult to appreciate. It is to preserve the sanctity as well the finality of an order of court. We therefore do not find any reason to depart from all these earlier decisions on this particular point. (emphasis added)

[88] Of course, at this juncture, the misconduct of the liquidator is not before us for us to make a final determination as to the liquidator's misconduct and contravention of the CA 2016. Nonetheless, it was certainly

before us that KIP as a counterparty to the TCA was complicit in the clear breach of the consent order despite its full knowledge of the subsistence of the consent order.

[89] Within the realm of the CA 2016, the respondents' ignorance and brazen transgression of the consent order was a clear contravention of s. 486(2) of CA 2016 which clearly prescribes that the conduct of liquidation by the liquidator shall remain subject to the control and orders of the court. The liquidator contravened CA 2016 by exercising his powers in contravention of the CA 2016, while the respondents had contravened and continue to contravene the CA 2016 by further perpetuating the onward dissipation of Ibaimas's lands.

The Second Contravention Of The CA 2016 (Against Paragraph 1(a) Of Part II Of The Twelfth Schedule Of The CA 2016)

[90] The second contravention and continued contravention of the CA 2016 by the respondents lies on the respondents' act of knowingly perpetuating the TCA despite having full knowledge that the liquidator had no authority (and had not obtained any leave of the court) to continue carrying on the business of Ibaimas.

[91] We are most aware that the respondents incessantly contend that the onward transmission of the Ibaimas's lands to KIP and direct 'sale' of the Ibaimas's lands were well within the scope of the liquidator's authority to conduct the liquidation process. Nor would we wish to deny the liquidator's authority to sell and liquidate a company's assets (which in fact is a power conferred upon a liquidator by way of statute).

[92] Nonetheless, the inception and unscrupulous design of the TCA was a far cry from a genuine sale of Ibaimas's lands for the purpose of distribution to Ibaimas creditors:

(i) the TCA did not purport to sell any of Ibaimas's lands. Instead, it purports to carry on Ibaimas's business to 'develop' Ibaimas's lands by appointing the RM2 shell company (KIP) as the 'unlicensed developer' to undertake the development works;

(ii) the supposed 'sale' under the TCA was instead Ibaimas's 'payment' to KIP by way of divesting some of Ibaimas's lands to KIP for 'work done' under the TCA;

(iii) in actuality, there was never any buying or selling of Ibaimas's lands. Nor were there any proceeds of sale which were intended to be channelled back into Ibaimas;

(iv) instead, Ibaimas's lands were abused as collateral to enable KIP to obtain a loan from OSK of which the proceeds of the loan were remitted to KIP (for KIP's benefit and use);

(v) instead, Ibaimas's lands were not sold but were transferred to OSK as 'payment' to redeem Ibaimas's lands that were put as collateral for KIP's loan; and

(vi) furthermore, since Ibaimas's lands were abused as collateral, Ibaimas actually incurred further liability as Ibaimas was put in a position in which Ibaimas's lands were charged to OSK as a new creditor (for the sole benefit of KIP).

[93] The appellants had to gone at length to submit the definition of a 'sale' to prove that the TCA was not at all a sale of Ibaimas's lands. In actuality, the very face and design of the TCA were already sufficiently telling that the TCA was not at all a sale of Ibaimas's lands and instead an exceedingly suspicious carrying on of Ibaimas's business. In any case, KIP should very well know that the liquidator had not made any formal application to the court for the requisite leave to continue carrying on the business of Ibaimas (see para. 1(a) of Part II of the Twelfth Schedule of the CA 2016):

> The liquidator may, **with the authority either of the Court** or of the committee of inspection –
>
> (a) **carry on the business of the company so far as is necessary for the beneficial winding-up of the company,** but the authority shall not be necessary to so carry on the business during the one hundred and eighty days after the date of the winding-up order; (emphasis added)

[94] Thus, even if the respondents were to insist that the TCA somehow serves to benefit Ibaimas, the inevitable fact remains that KIP had full knowledge that the liquidator had not obtained the statutory leave to empower the liquidator to carry on Ibaimas's business. On the same exact absence of leave, the liquidator had no authority whatsoever to execute the TCA.

The Third Contravention Of The CA 2016 (Against Section 527 (10) And Section 528 Of The CA 2016)

[95] Perhaps the most glaring contravention of all was the clear 'creation' of new debt, new creditors, and obvious undue preference in favour of Ibaimas's 'new' creditors being KIP (and OSK). As we have clearly identified above, for the majority of the time, KIP was not even in existence (or was ever a factor within Ibaimas's roster of creditors). The malicious design clearly reflected Ibaimas's and KIP's intention of eluding all other Ibaimas's genuine creditors while priming KIP to become Ibaimas's 'preferred' creditor'. This is exceptionally clear considering:

(i) the impugned JVA was incepted merely to artificially create KIP's 'ticket' to hastily be the first creditor in time to petition for Ibaimas's liquidation (KIP's POD of which was later put on hold by the Court of Appeal on 24 July 2023 pending the disposal of another suit impugning the validity of the 'debt' owed to KIP under the impugned JVA); and

(ii) the TCA was then incepted as a contractual vehicle for Ibaimas to carry on conducting Ibaimas's business in manners which clearly gives undue preference to KIP to be the 'chosen' creditor to be the first in line to be 'paid' with Ibaimas's lands (and has KIP's loans also be settled with Ibaimas's lands).

[96] The *factum* of undue preference was exceptionally irrefutable and thus KIP's receipt of the Ibaimas's lands under the TCA would have plainly transgressed upon the rule of *pari passu* distribution under s. 527(10) of the CA 2016 and the rule against undue preference under s. 528 of the CA 2016.

The Fourth Contravention of the CA 2016 (Against Section 472(1) of the CA 2016)

[97] Since we have found that the TCA was far from any genuine sale of Ibaimas's lands, KIP's involvement with the TCA would also transgress s. 472(1) and (2) of the CA 2016:

> 472. (1) **Any disposition of the property** of the company, **other than an exempt disposition,** including any transfer of shares or alteration in the status of the members of the company **made after the presentation of the winding-up petition** shall, **unless the Court otherwise orders,** be **void.**
>
> (2) In subsection (1), **"exempt disposition" means a disposition** made by a liquidator, or by an interim liquidator of the company **in exercise of the power conferred on him under Part I of Twelfth Schedule** or the rules that appointed him or an order of the Court. (emphasis added)

[98] The TCA being a 'continuation' of Ibaimas's business was certainly not within the ambit of an exempted disposition (as the TCA was not at all a plain and genuine sale and liquidation of Ibaimas's Lands by the liquidator under Part I of Twelfth Schedule of the CA 2016). Thus, since KIP was well aware that Ibaimas (or the liquidator) had never applied for the court's leave to carry on Ibaimas's business to execute TCA, then KIP was clearly complicit to the contravention of s. 472(1) and (2) of the CA 2016.

[99] With the concrete establishment of the contraventions above, the appellants have successfully fulfilled all of the elements to warrant the granting of a statutory injunction under s. 351 of the CA 2016. We are also firmly of the view not to allow any further abuse of the winding-up framework so as to prematurely stifle the appellants' pursuit of their rights as creditors of Ibaimas.

This Court's Decision

[100] All the aforementioned deliberations considered, we find that the learned judge was plainly wrong in dismissing the appellants' application for a statutory injunction under s. 351 of the CA 2016 and thus warranted our appellate intervention.

[101] We therefore allow the appellants' appeal and set aside the learned judge's decision and order dated 25 October 2024.

[102] We accordingly allow the appellants' application and specifically order an injunction as specifically prayed in prayer (3) of the appellants' application (reproduced here with the appropriate modifications for clarity):

> Each of the Defendants (the Respondents here) either by themselves, or through its directors, employees, agents, servants, contractors, sub-contractors, and/or solicitors, are hereby restrained to give any effect to, or take any steps to transfer or vest the lands or any interest of the lands or create any interest in the lands belonged or belonging to Ibaimas to themselves or any other parties, including but not limited to the lands and Sales and Purchase Agreements in Schedule A to the Notice of Application, without prior leave of Court or consent in writing by the Plaintiffs (the Appellants here), pending the full disposal of Suit 133.

[103] This court accordingly orders costs as follows:

(i) that the first and fourth respondents to pay costs of RM20,000 (costs here and below) to the appellants, subject to allocatur; and

(ii) that the second, third, fifth, sixth and seventh respondents to pay costs of RM20,000 (costs here and below) to the appellants, subject to allocatur.